

No. 21-60743

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS; GREG ABBOTT, GOVERNOR OF TEXAS;
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY;
FASKEN LAND AND MINERALS, LTD.; and
PERMIAN BASIN LAND AND ROYALTY OWNERS,
Petitioners,

v.

NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

On Petition for Review of Action by the
Nuclear Regulatory Commission

**RESPONSE IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS OR TRANSFER THE
PETITION FOR REVIEW OF FASKEN LAND AND MINERALS
AND PERMIAN BASIN LAND AND ROYALTY OWNERS**

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CERTIFICATE OF INTERESTED PERSONS

Case No. 21-60743

STATE OF TEXAS; GREG ABBOTT, GOVERNOR OF TEXAS;
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY;
FASKEN LAND AND MINERALS, LTD.; and
PERMIAN BASIN LAND AND ROYALTY OWNERS,
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v.

NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2. have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Petitioners
 - a. State of Texas
 - b. Greg Abbott, Governor of Texas
 - c. Texas Commission on Environmental Quality
 - d. Fasken Land and Minerals, Ltd.
 - e. Permian Basin Land and Royalty Owners
2. Counsel for Petitioners
 - a. Michael Abrams, Office of Attorney General, State of Texas

- b. Ryan Baasch, Office of Attorney General, State of Texas
 - c. Henry Carl Myers, Office of Attorney General, State of Texas
 - d. Allan Kanner, Kanner & Whiteley, L.L.C.
 - e. Annemieke M. Tennis, Kanner & Whiteley, L.L.C.
 - f. Monica Renee Perales
3. Respondents
- a. United States Nuclear Regulatory Commission
 - b. United States of America
4. Counsel for Respondents
- a. Andrew P. Averbach, U.S. Nuclear Regulatory Commission
 - b. Todd Kim, U.S. Department of Justice
 - c. Jennifer Scheller Neumann, U.S. Department of Justice
 - d. Justin Heminger, U.S. Department of Justice
5. Respondent-Intervenor
- a. Interim Storage Partners, LLC
 - b. Orano CIS, LLC
 - c. Orano USA, LLC
 - d. Orano SA, owned by government of France, Mitsubishi, and Japan
Nuclear Fuel
 - e. Waste Control Specialists, LLC

- f. Fermi Holdings, Inc.
 - g. J.F. Lehman & Co.
6. Counsel for Respondent-Intervenor
- a. Brad Fagg, Morgan, Lewis & Bockius LLP

/s/ Allan Kanner

Allan Kanner
Counsel for Petitioners
Fasken Land & Minerals, Ltd. and
Permian Basin Land & Royalty Owners

Petitioners Fasken Land and Minerals, Ltd. and the Permian Basin Land and Royalty Owners (collectively “Fasken”) filed their Petition for Review challenging the Nuclear Regulatory Commission’s (“NRC”) compliance with the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*, (“NEPA”) in the preparation of its Environmental Impact Statement (“EIS”) and record of decision associated with its issuance of the Interim Storage Partners, LLC (“ISP”) license to build and operate a consolidated interim storage facility (“CISF”) for high-level radioactive waste and spent nuclear fuel. Fasken’s Petition was consolidated with the petition for review filed by the State of Texas, Governor Abbott, and the Texas Commission on Environmental Quality (collectively “Texas”). Like the motion to dismiss directed at Texas’ petition, Respondents NRC and the United States of America (collectively “Respondents”) seek dismissal of Fasken’s Petition alleging that Fasken is not a “party aggrieved.” Unlike the motion to dismiss directed at Texas’ petition, Respondents alternatively seek transfer of Fasken’s Petition to the United States Court of Appeals for the District of Columbia Circuit Court.

Respondents’ Motion should be denied. As discussed further herein, Fasken is a party aggrieved by virtue of its participation in the underlying adjudicatory proceeding. And, transfer of Fasken’s Petition to another Circuit Court is inappropriate, particularly given Respondent’s admission that Texas’ petition will remain before this Court.

BACKGROUND

Challenges to the NRC Administrative Proceedings Consolidated in the D.C. Circuit Court

Fasken filed several contentions challenging material omissions, inadequacies, inaccuracies, and deficiencies with the ISP license application, as well as the lack of NRC authority to license a CISF application with conditions that would admittedly violate the Nuclear Waste Policy Act (“NWPA”). In unprecedented fashion, the NRC found each and every contention filed to be inadmissible, dismissing numerous filed contentions and denying intervenor status to each and every petitioner, terminating the administrative proceeding and closing the record prior to NRC publishing its draft ISP EIS for public comment.¹

On August 20, 2021, Fasken filed a petition for review in the D.C. Circuit challenging three NRC orders entered during the administrative proceedings. Petition, Doc. #1911677, *Fasken v. NRC*, No. 21-1179 (D.C. Cir. Aug. 20, 2021). Specifically, Fasken challenged the NRC Secretary’s October 29, 2018 Order converting Fasken’s motion to dismiss, asserting that the proceeding contemplated a license permitting federal ownership of spent nuclear fuel in violation of the NWPA, into a contention; and NRC Memorandum and Order CLI-20-14, issued on

¹ See *Interim Storage Partners, LLC* (WCS CISF), LBP-19-11, 90 NRC 358, 368 (2019) (terminating ISP administrative proceeding in December of 2019); 85 Fed. Reg. 27447 (May 8, 2020) (NRC publication of notice regarding the availability of the draft ISP EIS and requesting public comments).

December 17, 2020, and NRC Memorandum and Order CLI-20-04, issued on June 22, 2021, denying Fasken's contentions filed in the administrative proceeding. *Id.*

The D.C. Circuit consolidated Fasken's petition with three other pending petitions for review also challenging similar NRC orders issued during the administrative proceeding. Order, Doc. #1911723, *Don't Waste Michigan*, No. 21-1048 (D.C. Cir. Aug. 26, 2021). Petitioner Beyond Nuclear's petition concerned the same NRC Secretary Order converting its motion to dismiss, challenging the proceeding that contemplated a license permitting federal ownership of spent nuclear fuel in violation of the NWPAA, into a contention, and sought review of NRC Memorandum and Order CLI-20-14 subsequently denying that contention. Petition, Doc. #1884596, *Beyond Nuclear, Inc. v. NRC*, No. 21-1056 (D.C. Cir. Feb. 10, 2021). The petitions filed by Sierra Club and *Don't Waste Michigan, et al.*, sought review of NRC orders (CLI-20-13, CLI-20-14, CLI-20-15) denying their respective contentions. Petition, Doc. #1884915, *Sierra Club v. NRC*, No. 21-1055 (D.C. Cir. Feb. 9, 2021); Petition, Doc. #1883596, *Don't Waste Michigan v. NRC*, No. 21-1048 (D.C. Cir. Feb. 2, 2021).

NEPA Challenges to NRC's Record of Decision and Issuance of the ISP License Filed in the Fifth, Tenth and D.C. Circuits

On September 13, 2021, the NRC concurrently issued its record of decision and Materials License No. SNM-2515 for ISP to construct and operate a CISF. Texas filed its petition challenging these final agency actions on September 23,

2021. Fasken filed its Petition on November 12, 2021, within the 60-day period allowed by the Hobbs Act, 28 U.S.C. § 2344, also challenging the NRC's actions as violating NEPA with respect to the EIS prepared by the NRC that culminated in its record of decision and the issuance of the ISP license. This Court consolidated Fasken's Petition with Texas' petition.

Fasken filed this Petition in this Court, rather than the D.C. Circuit where its adjudicatory petition is pending, because this Petition challenges different final agency actions and raises different claims. Fasken's decision to file its Petition in this Court is appropriate, given that venue is proper in this Circuit (Fasken is domiciled in this Circuit) and that Texas had already filed its similar petition (and the only petition at the time) challenging the NRC's record of decision and ISP license in this Court.²

The same day Fasken filed its Petition in this Court, five other petitions for review were filed. The State of New Mexico filed a petition for review in the Tenth Circuit challenging the NRC record of decision and issuance of the ISP license for similar NRC NEPA violations associated with the EIS preparation. Petition, Doc. #010110604703, *State of New Mexico v. NRC*, No. 21-9593 (10th Cir. Nov. 12, 2021). The Sierra Club and Don't Waste Michigan, *et al.*, jointly filed a petition

² In criticizing Fasken for filing its Petition in this Court instead of in the D.C. Circuit where other petitions were also filed, Respondents refer to those petitioners who filed in the D.C. Circuit as Fasken's "co-petitioners." There is no relationship between or among Fasken and the other petitioners in the D.C. Circuit.

for review in the D.C. Circuit also challenging the ISP record of decision and NRC NEPA violations associated with its EIS preparation (Sierra Club and Don't Waste Michigan collectively referred to as "SC/DWM" with respect to their joint petition). Petition, Doc. #1922494, *Sierra Club, et al., v. NRC*, No. 21-1229 (D.C. Cir. Nov. 12, 2021). The petitions filed by New Mexico and SC/DWM raise issues similar to those raised by Fasken and Texas in this Court.

The three other petitions filed in the D.C. Circuit were similar to each of those same petitioner's respective pending administrative petitions for review regarding the denial of contentions. Beyond Nuclear's petition added the issuance of the ISP license as the third and last NRC Order but continued to assert only that the NRC violated the NWPA for the reasons set forth in its original petition. Petition, Doc. #1922345, *Beyond Nuclear v. NRC*, No. 21-1230 (D.C. Cir. Nov. 12, 2021). The Sierra Club's and Don't Waste Michigan's petitions asserted the same wrongful denial of their respective contentions as asserted in their original petitions, but they also added the NRC's issuance of the ISP license to their new petitions. Petition, Doc. #1922379, *Sierra Club v. NRC*, No. 21-1227 (D.C. Cir. Nov. 12, 2021); Petition, Doc. #1922417, *Don't Waste Michigan v. NRC*, No. 21-1231 (D.C. Cir. Nov. 12, 2021). The D.C. Circuit consolidated these three petitions with the original four petitions pending before it also relating to the administrative proceeding. Order, Doc. #1922896, *Don't Waste Michigan*, No. 21-1048 (D.C. Cir.

Nov. 17, 2021). The D.C. Circuit did not consolidate the SC/DWM’s joint petition with the other seven petitions relating to the ISP administrative proceeding.³

ARGUMENT

I. Fasken is a “Party Aggrieved” and has Properly Challenged, in this Court, NRC’s Compliance with NEPA in its EIS Preparation and its Record of Decision in Association with the Issuance of the ISP License.

The Hobbs Act provides the jurisdictional basis for federal court review of NRC final actions.⁴ 28 U.S.C. §§ 2342(4), 2344. Section 2344 provides that “[a]ny party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies.” *Id.* at § 2344. Fasken is a “party aggrieved” and thus, satisfies this threshold requirement.

An aggrieved party is one that “participated in the agency proceedings under review.” *Wales Transp., Inc. v. I.C.C.*, 728 F.2d 774, 776 n.1 (5th Cir. 1984); *Massachusetts v. U.S.*, 522 F.3d 115, 131 (applying a “functional test” asking “whether the would-be petitioner directly and actually participated in the administrative proceedings” to determine whether one is a “party aggrieved” for

³ Respondents assert that the D.C. Circuit “apparently inadvertently exclude[ed]” the SC/DWM joint petition from its consolidation order; however, it is more likely that the D.C. Circuit recognized the differences between the joint petition, which raises NEPA claims associated with the preparation of the EIS and challenges to the NRC’s record of decision, and the other petitions, addressing the underlying administrative proceeding and the denial of associated contentions.

⁴ Fasken’s Petition asserts alternative bases for jurisdiction, including the Administrative Procedure Act, 5 U.S.C. § 702. Petition at 3. Respondents’ Motion does not challenge the Court’s jurisdiction on these alternative bases, which is another reason the Motion should be denied.

Hobbs Act purposes). As Respondents acknowledge, Fasken participated in the agency proceedings below. *See* discussion, *supra*. Fasken was significantly involved in the agency proceeding and satisfies the “party aggrieved” requirement for this appeal.

Respondents improperly seek to impose NRC’s own rules for participating in agency proceedings as the standard for this Court’s jurisdiction. However, courts “do not equate the regulatory definition of a ‘party’ in an [agency] proceeding with the participatory party status required for judicial review under the Hobbs Act.” *Clark & Reid Co., Inc. v. U.S.*, 804 F.2d 3, 6 (1st Cir. 1986). If judicial review were dependent on whether a petitioner was a party according to NRC regulations, the NRC would be able to limit judicial review of its licensing decisions by denying all contentions filed during the administrative process. This cannot be the intent of the Hobbs Act.⁵

Furthermore, the Fifth Circuit recognizes an exception to the participation rule—even if a petitioner was not a party to the original agency proceeding, a petitioner may appeal an agency action if it is attacked as exceeding the agency’s power. *Wales Transp.*, 728 F.2d at 776 n.1. Here, Fasken will argue that the NRC

⁵ The Hobbs Act requires the petitioner to be a “party aggrieved.” Respondents only challenged Fasken’s status as a “party” and not whether Fasken was aggrieved. The Fifth Circuit incorporates a standing analysis to determine whether the petitioner is “aggrieved.” *Kansas City Southern Industries, Inc. v I.C.C.*, 902 F.2d 423, 429 (5th Cir. 1990). There is no dispute that Fasken is aggrieved and has standing.

acted beyond its authority in violating NEPA in connection with its preparation of the ISP EIS and record of decision and by otherwise acting in violation of the NWPA.

For the reasons set forth above, the Court has jurisdiction over Fasken's Petition, and Respondents' Motion should be denied. Alternatively, the Court should carry Respondents' Motion with the case, as it did with Respondents' similar motion filed against Texas' petition. *See* Order, Doc. #00516101001.

II. Respondents' Transfer Request is Inappropriate and should be Denied.

Respondents' request to transfer Fasken's Petition to the D.C. Circuit is inappropriate and in violation of 28 U.S.C. § 2112, a venue provision controlling the multiple petitions at issue. Moreover, the fatal flaw in Respondents' argument for transfer is their admission that Texas' petition, based on the same final agency order and the same underlying record and which will include similar arguments, will remain in this Court. It thus makes no sense to transfer Fasken's Petition, which was properly filed in this Court—the court with the first-filed petition for review and first-filed agency record.

There is no dispute that venue is proper in this Court. Fasken resides in this judicial circuit, making venue proper in the Fifth Circuit under the Hobbs Acts' venue provision. 28 U.S.C. § 2343. Rather, Respondents improperly ask this Court to transfer Fasken's Petition (and only Fasken's Petition) to the D.C. Circuit

purportedly in the interests of justice, efficiency, and to avoid conflicting decisions.

28 U.S.C. § 2112 provides the mechanical rule for venue when appeals are instituted with respect to the same order in two or more courts of appeal. *Nat'l Parks Conservation Assoc. v. EPA*, 991 F.3d 681, 684 (5th Cir. 2021) (noting that § 2112 provides a mechanical rule for determining which court should determine venue in the case of conflicting petitions for review) (internal quotation omitted); *Westinghouse Elec. Corp. v. NRC*, 598 F.2d 759, 766 (3d Cir. 1979) (“The purpose of § 2112(a) is to provide a mechanical rule easy of application to avoid confusion and duplication by the courts.”) (internal quotation omitted). Under this statute, since Texas filed its petition in this Court within ten days of the NRC’s final order issuing the ISP license and this was the first petition filed with respect to that order, this Court is the appropriate venue for these matters. 28 U.S.C. § 2112(a)(1). Other courts in which proceedings are later instituted “with respect to the same order” are directed to transfer those proceedings to this Court. *Id.* at § 2112(a)(5). Contrary to Respondents’ transfer argument, rather than transferring Fasken’s Petition to the D.C. Circuit, under this statute, it is appropriate for the D.C. Circuit to transfer the SC/DWM joint petition raising NEPA violations and challenging the issuance of the ISP license to this Court. Similarly, the Tenth Circuit should

likewise transfer New Mexico's petition also raising NEPA violation claims and challenging the issuance of the ISP license to this Court.⁶

Despite the clear import of this venue statute, Respondents nevertheless argue that Fasken's Petition should be transferred. First, Respondents argue that this Court is not where the first petition was filed because they contend Texas' petition is jurisdictionally infirm. This argument should be rejected. "[C]ourts have held that even when the validity of the filing of the first petition is in dispute, all the petitions should be transferred to the court in which the disputed petition was filed, and that court should proceed to determine the order in which valid petitions for review were filed." *Westinghouse*, 598 F.2d at 767; *Nat'l Parks Conservation Assoc.*, 991 F.3d at 685 (same); *BASF Wyandotte Corp. v. Costle*, 852 F.2d 108, 112 n.7 (1st Cir. 1978) (same).

Next, Respondents argue that the consolidated appeals pending in the D.C. Circuit were the first-filed petitions because they involve appeals of NRC orders issued in the same administrative proceeding. This argument should be rejected. 28 U.S.C. § 2112 specifically refers to appeals relating to the "same order" not the "same proceeding."

⁶ Once all proceedings instituted with respect to the same order are before this Court, it has the discretion to transfer all proceedings to another court of appeals. 28 U.S.C. § 2112(a)(5).

The consolidated appeals pending in the D.C. Circuit and the petitions filed in this Court by Texas and Fasken challenge different final agency actions. As set forth above, the consolidated appeals pending in the D.C. Circuit involve the administrative process and challenges to five NRC orders denying various contentions filed during that process. Fasken's petition for review relating to the administrative process is included among those consolidated appeals. On the other hand, Fasken's Petition at issue here raises NEPA violations associated with NRC's EIS leading to NRC's record of decision and order issuing the ISP license, a different final agency action. Respondents accurately described the administrative process in their motion to dismiss Texas' petition. Mtn to Dismiss at 7-8, Doc. #00516080699. And, in its Motion here, Respondents described those administrative orders as independent NRC orders. Mtn. at 4. Yet, for purposes of its transfer argument, Respondents blur the distinction among the various petitions for review and suggest all NRC orders should be treated as the "same order."

Fasken's Petition raising NEPA violations associated with the EIS preparation and seeking review of the NRC's record of decision and issuance of a license to ISP does not fit the "same order" exception cited by Respondents in *Public Service Comm'n for New York v. Fed. Power Comm'n*, 472 F.2d 1270, 1272 (D.C. Cir. 1972) where "continuance of the same appellate tribunal is necessary to maintain continuity in the total proceeding." (internal quotation

omitted). It is also not the case where the petitions for review relate to interim and then final agency regulations like *BASF Wyandote*, 582 F.2d at 109-10. The final agency orders at issue in the administrative consolidated appeals pending in the D.C. Circuit are different from the final agency order at issue in this Court.⁷

The D.C. Circuit has also recognized that the appeals concern different final agency orders. Prior to filing their new petitions in the D.C. Circuit, Beyond Nuclear, Sierra Club, and Don't Waste Michigan, *et al.*, each first filed amendments to their original petitions regarding the administrative process to add NRC's issuance of the ISP license. Petition, Doc. #1920947, *Beyond Nuclear v. NRC*, No. 21-1056 (D.C. Cir. Nov. 4, 2021); Petition, Doc. #1920999, *Sierra Club v. NRC*, No. 21-1055 (D.C. Cir. Nov. 4, 2021); Petition, Doc. #1921507, *Don't Waste Michigan*, No. 21-1048 (D.C. Cir. Nov. 8, 2021). The D.C. Circuit *sua sponte* directed the parties to address "whether a new petition for review rather than an amended petition, is required [to] obtain review of the order granting a license." Order, Doc. #1921742, *Don't Waste Michigan*, No. 21-1048 (D.C. Cir. Nov. 10, 2021). These three petitioners subsequently filed new petitions on November 12, 2021, as noted above.

⁷ The Certified Index of the Record filed by the NRC in this Court is different from the Certified Index of the Record it filed in the D.C. Circuit, also evidencing differences in the issues on appeal. See Revised Certified Index of the Record, Doc. #0051611770 (5th Cir. Dec. 6, 2021); Certified Index of the Record, Doc. #1923391, *Don't Waste Michigan*, No. 21-1048 (D.C. Cir. Nov. 22, 2021).

Further, although the D.C. Circuit *sua sponte* consolidated Beyond Nuclear's, Sierra Club's, and Don't Waste Michigan's recently filed petitions repeating their respective administrative process claims with the originally consolidated administrative petitions for review, it did not consolidate SC/DWM's joint petition, which did not include issues associated with the pending administrative process-related appeals. Order, Doc. #1922896, *Don't Waste Michigan*, No. 21-1048 (D.C. Cir. Nov. 17, 2021).

There is no merit to Respondents' argument that Fasken's Petition should be transferred to the D.C. Circuit pursuant to 28 U.S.C. § 2112.

Because 28 U.S.C. § 2112 does not support a transfer, Respondents argue for transfer of Fasken's Petition in the interest of justice to void conflicting decisions among the courts. However, Respondents' effort to demonstrate conflicting decisions falls short. First, Respondents summarily argue that a decision by the D.C. Circuit that the NRC properly denied Fasken's contentions in the administrative process would conflict with this Court's review of Fasken's NEPA challenges associated with the EIS preparation and subsequent record of decision and issuance of the ISP license. This argument is based on an incorrect interpretation of the Hobbs Acts' "party aggrieved" requirement as discussed in Section I above.

In addition, Respondents point to Fasken's statement of issues filed in its D.C. Circuit administrative process appeal and its Petition filed in this Court, both of which reference NEPA, to suggest that Fasken will raise issues on appeal that overlap. It is clear from the portion of Fasken's D.C. Circuit administrative filing quoted by Respondents that Fasken's D.C. Circuit administrative appeal relates to the NRC's denial of Fasken's contentions, which is not an issue in this Court.

Moreover, Respondents acknowledge that even if this Court were to transfer Fasken's Petition to the D.C. Circuit, Texas' petition, which raises similar issues as Fasken's Petition, would remain before this Court. Transferring Fasken's Petition to the D.C. Circuit would not necessarily result in consolidated briefing as Respondents suggest. As noted, the D.C. Circuit has not consolidated the SC/DWM joint petition raising NEPA claims associated with the EIS and record of decision with the other administrative process appeals, and for the same reason, it is not likely to consolidate Fasken's Petition raising NEPA claims associated with the EIS and final record of decision and license issuance with those administrative process appeals. The result of a transfer would be only to deprive Fasken of its chosen forum. It is difficult to see the interest of justice, convenience and efficiency gained by a transfer of Fasken's Petition under these circumstances.

Further, this Court has established a briefing schedule for Fasken's Petition and Texas' petition. On December 6, 2021, the parties submitted a Joint

Unopposed Motion to Extend Time to File Opening Briefs, which would allow both Texas and Fasken to file their opening briefs on the same day and allow Respondents to file a consolidated brief in response. Joint Motion, Doc. #00516118517. Efficiency, convenience and the interest of justice are best served by denying Respondents' Motion.

CONCLUSION

For the reasons set forth herein, Fasken respectfully requests that the Court deny Respondents' Motion to Dismiss and to Transfer, or in the alternative, carry the Motion with the case.

Dated: December 13, 2021

Respectfully submitted,

/s/Allan Kanner
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**CERTIFICATE OF COMPLIANCE WITH FEDERAL
RULE OF APPELLATE PROCEDURE 27(D)**

I certify that this filing complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Time New Roman, a proportionally spaced font.

I further certify that this filing complies with the type-volume limitation of Fed. R. App. P. 27 (d)(2)(A) because it contains 3,502 words, excluding the parts of the filing exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/Allan Kanner

Allan Kanner

Counsel for Fasken Land & Minerals,
Ltd. and Permian Basin Land &
Royalty Owners

CERTIFICATE OF SERVICE

I certify that on December 13, 2021, I served a copy of **PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS OR TRANSFER THE PETITION FOR REVIEW** upon counsel for the parties in this action by filing the document electronically through the CM/ECF system. This method of service is calculated to serve counsel at the following e-mail addresses:

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